

Western New England Law Review

Volume 16 16 (1994)
Issue 2

Article 2

1-1-1994

REMARKS ON BEING SWORN IN AS A UNITED STATES DISTRICT JUDGE

Michael Ponsor

Follow this and additional works at: <http://digitalcommons.law.wne.edu/lawreview>

Recommended Citation

Michael Ponsor, *REMARKS ON BEING SWORN IN AS A UNITED STATES DISTRICT JUDGE*, 16 W. New Eng. L. Rev. 209 (1994), <http://digitalcommons.law.wne.edu/lawreview/vol16/iss2/2>

This Remark is brought to you for free and open access by the Law Review & Student Publications at Digital Commons @ Western New England University School of Law. It has been accepted for inclusion in Western New England Law Review by an authorized administrator of Digital Commons @ Western New England University School of Law. For more information, please contact pnewcombe@law.wne.edu.

Volume 16
Issue 2
1994

WESTERN NEW ENGLAND LAW REVIEW

REMARKS ON BEING SWORN IN AS A UNITED STATES DISTRICT JUDGE*

MICHAEL A. PONSOR**

It is customary on these occasions to begin by thanking people. In fact, it is such a commonplace it is hard to do it with enough freshness to convey the tremendous sense of gratitude that I feel standing here today. And there are so many people to thank, I couldn't possibly mention everyone. But let me mention a few.

First, I want to thank my mother and father. A Chinese parable has it that a child could carry his parents on his back throughout his life and still not repay the debt owed to them. When I was an undergraduate this story seemed like poetic hyperbole; as a parent myself now, I realize that it is a gross understatement.

My father's father immigrated from Sweden as a boy and sharecropped a dairy farm in Northern Illinois. My father put himself through university, joined the navy and, as a twenty-three year old lieutenant, ferried troops onto Normandy beach. He went on to a career travelling the world as the chief financial officer of a successful corporation. My mother raised my sister and me, then re-

* Delivered on Monday, March 14, 1994, at Symphony Hall, Springfield, Massachusetts.

** United States District Judge, District of Massachusetts. B.A., 1969, Harvard University; B.A., 1971, M.A., 1979, Pembroke College, Oxford University, England; J.D., 1975, Yale Law School.

Judge Ponsor served as a magistrate judge, United States District Court, District of Massachusetts, from January 6, 1984, until his appointment as a United States district judge. Judge Ponsor has also been a member of the Adjunct Faculty at Western New England School of Law since 1988.

turned to university herself, graduated *summa cum laude*, obtained a graduate degree, published a book, and spent two decades teaching college.

If I am struck by a bolt of lightning leaving Symphony Hall today, and reduced to a briquette, this ceremony will not have been in vain, because it has provided me an opportunity publicly to acknowledge the love and gratitude I feel towards my parents, and the pride I take in the example of their lives—their hard work, their generous spirits and their absolute integrity.

I also want to thank my sister Valerie, my first friend, the peer who has put up with me the longest and with whom I have shared and still share all my life's joys and tribulations. She has two fantastic kids, my nephew and niece, Joshua and Erin.

My three children probably deserve the most thanks of anyone. Christian, who has known me the longest, will be twenty-three tomorrow, the same age my father was on D-Day nearly fifty years ago. Christian has taught me more than any law professor about the practicalities of administering justice, particularly when the object of your ruling is on the wrestling team and has the capacity to pull off your head by accident. I am so proud of the man he has become, and so happy to have him here today.

My two little ones, Anne and Joseph, deserve the good sportsmanship award. They have endured the moods that the pressures of judging sometimes bring on, survived my workday cooking, and coped with clothing crises on mornings when I have forgotten to move the laundry into the dryer. I sometimes wonder whether Oliver Wendell Holmes had to deal with this kind of problem. I think not. It's a new world. While it isn't easy keeping professional and domestic demands in balance, I believe the effort makes us more compassionate, more competent professionals, and better parents. It also makes us deeper, more complex, and more exhausted human beings.

I am buoyed up this morning by the presence of almost all my dearest and oldest friends, a number going back to my high school and undergraduate days. People who know everything about you, and nevertheless retain a fondness for you, warts and all, are for me the oxygen of life. I want to thank particularly one very dear friend, both mine and my children's, Nancy Coiner, for her generosity and support during this past, amazing year.

The opportunity to meet Robert Fiske has been a thrilling bonus to this whole process. Although he called me yesterday to say

he could not be here, I want to thank him now for taking on the task of interviewing me. I also want to thank my friend, Michael Greco, for his kind words this morning.

Thanks are also due to Congressman Richie Neal, whose encouragement early in the process helped give me the chutzpa to apply for this job in the first place.

The greatest reward of the past ten years has been the opportunity to get to know the judges of this circuit and particularly of the District of Massachusetts. It's almost trite to talk of a court "family," but it's true. Our superb Chief Judge Steve Breyer sets the tone of collegiality in our circuit. I have been fortunate to have had the friendship and tutelage of some of the best judges who have ever lived. My debt is especially great to my excellent friends, the magistrate judges in Massachusetts: Larry Cohen, Joyce Alexander, Bob Collings, Mimi Bowler, Zack Karol, and Brownie Swartwood, and my once and future colleague, Patti Saris.

The mention of Patti brings me to the company I will enjoy coming onto this court. When I consider the quality of the people I am associated with, Patti, Rick Stearns, Reg Lindsay, and soon, Nancy Gertner, it makes me feel as though Senator Kennedy threw me in to round out the group, for comic relief. To join the court is wonderful; the pleasure is doubled by these, my siblings in the law.

Without my staff here at the courthouse, this day never would have dawned—especially my two Lizes, Liz Collins, my secretary, and Liz French, my courtroom deputy. They are my right arm and left arm and, when either of them is gone, it is a standing joke that everyone in the courthouse can hear my moans of misery. On rare days when they both happen to be missing, I have no arms at all and can only make progress by biting things. Many thanks also to John Stuckenbruck, Evelyn Krupa, and Mary Finn and to my several law clerks, who turn my clay to gold.

I can't leave the subject of the court without singling out my two godparents in the law, Frank Freedman and Joe Tauro.

As for Frank Freedman, it is hard for me to talk about a person for whom I have such deep affection and respect. He planted the United States district court in this city. He brought it here in his own hands and heart and mind, and he has been the soul and the sunshine of this court ever since. The transition we make today in bringing on the second full-time district judge ever to sit here signifies that he has succeeded in making this court a firmly rooted, verdant institution. He did it. This ceremony is really a celebration

and a confirmation of his work for the people of Western Massachusetts.

Beyond this, having been shoulder to shoulder with him for more than ten years now, I must say there simply is no more supportive superior to work for, no better colleague to work with. The district court judge out here in Springfield is the only frog in the pond. Along with technical legal skills, it takes special sensitivity to the life of our community to make the United States District Court of the Western Section the powerful force for good it has become. If I can carry on the work of the court with anything resembling the tact, compassion, and intelligence Frank Freedman has demonstrated in his years as a judge, I will be okay.

I'll tell you something about Frank Freedman, by the way, that some of you may not know. He may be an outstanding judge, but he is an absolute genius about baseball. If the Red Sox had made even half the trades he's described to me over the past decade, they would be a force today that would make the Yankees of the fifties look like little leaguers. In fact, I think of Frank as much as the Earl Weaver, as the Earl Warren, of Springfield. With his record, he will be a tough act to follow.

Everyone here knows now that I clerked for Joe Tauro. In fact, while I was clerking for him, he swore me in as a member of the bar of the federal court. As part of the ceremony he described my educational qualifications and then remarked to the audience that my resume was pretty good for someone who could neither read nor write.

Although everyone knows that I clerked for Judge Tauro, I don't think the story of how this actually happened is known, even to Joe himself. While I would never reveal the story publicly, I feel comfortable in the privacy of this room, and among friends, relating it now.

I was working for the summer for the law firm Hill & Barlow. One of the young members of the firm at that time was a guy named Bill Weld, whom we summer associates looked up to. When I got the offer from Joe I was unsure about whether to accept it so I went to Weld to discuss it. He put his hand on my shoulder and he told me I'd have to take it. One thing he knew was family pedigree. "Tauro," he said to me. "Tauro. Think about it. He is so good at cutting through the baloney that his people named one of their lawnmowers after him." What did I know? It was six months after

I started working for him that I finally realized the spelling was different and by then it was too late. I was stuck.

It is in fact true that Judge Tauro comes from a great family—his father of course was chief justice of the [Supreme Judicial Court]. But it is also true he is a great man himself. Just to touch on one small aspect of his many accomplishments, I was privileged to accompany him, as a clerk, on his first site visit to the Monson State School for the Retarded. The conditions in 1974 were truly appalling. He described the place as a pigpen, which was being generous.

For the next twenty years, Joe Tauro supervised the implementation of a group of consent decrees—exercising a precise feel for when to use the velvet glove, when to use the iron hand—that turned night into day for thousands of disenfranchised persons. Recently, when his court closed out its active involvement in the consent decrees, one man who had a child at a state school remarked that if he had only one friend in the world he would want that friend to be Joe Tauro.

I have been blessed to have Joe Tauro as a friend, and I am doubly blessed now at the prospect of deepening our friendship as colleagues on this court.

Finally, I must thank the man who literally made today possible, Senator Edward Kennedy. Of all the incredible experiences I have had during this selection process, the opportunity to get to know our state's senior senator, even a little, has been—both in the literal and in the adolescent sense—awesome.

Let me take just one characteristic incident. Last spring, I had been selected by the commission established by Senator Kennedy and headed by former ABA President Jack Curtin as one of a group of potential district court nominees, and I was summoned to Washington for an interview with the Senator, whom I had never met before. In fact, my first reaction when he walked into the room was to think in amazement that he looked just exactly like Ted Kennedy!

Now I have been in many interviews. I don't even like to think of how many. I'm kind of the Barishnokov of interviewing. But I have never been in an interview that was as thorough, as humane, and as provocative as the discussion I had that spring day with the Senator. The questioning was lengthy, it was conducted by the Senator personally, and there were no interruptions. He was completely conversant not only with my resume but with the

voluminous materials I had appended to my application. If this process has worked—and that will be for you to judge—it has worked because of the diligence, care, and sheer professionalism of the man behind it.

I'd also like to take off my judge hat, or my judge robe, and speak just as a citizen of Western Massachusetts—step outside myself, so to speak—and thank the Senator for making sure that the judge in this Western Massachusetts court is a person of Western Massachusetts. I believe it would have been a terrible mistake—and I know the attorneys in this room agree with me—for someone unfamiliar with the unique culture of the Connecticut Valley and the Berkshires to take on this job. The Senator showed great respect for all of us who live here by making sure that mistake was not made. So I offer a double thanks to Senator Kennedy.

Western Massachusetts is a unique place. For those who may not know, the Western Section of the United States District Court for the District of Massachusetts is the four counties of Western Massachusetts: Hampden, Hampshire, Franklin, and Berkshire—101 cities and towns, 2800 square miles, 820,000 people. If it is not yet too square to say in our ironic, post modernist, deconstructed world that we love our country, surely I can still say that I love my locale.

Physically, it is one of the most beautiful patches of ground on the planet. When those of us who live here go off to Boston, we only begin to feel at home again when the Pike goes down to two lanes, the traffic thins out, and the hills begin to close in. Aside from its loveliness, there is not another area in the country, comparable in size and population density, that has made a richer contribution to the life of our nation. It is truly sacred ground.

Think about it. In the arts, arguably the greatest American poet, Emily Dickinson, lived her whole life in my home town of Amherst. Herman Melville wrote what many think is the greatest American novel, *Moby Dick*, while living at Arrowhead Farm in Pittsfield. William Cullen Bryant, the most popular poet of the 19th century, was born in Cummington and actually practiced law in Great Barrington. Cummington, incidentally, is today the home of Richard Wilbur, who was America's poet laureate at the time of our bicentennial. Other contemporary poets, such as Robert Frost and Adrienne Rich, have spent substantial parts of their lives here.

Historically, George Washington personally selected Springfield as the site of America's first armory, because of its industrial

facilities and its safe distance from Boston. A few years later a group of typically cantankerous Western Massachusetts citizens, under Daniel Shays, attacked it unsuccessfully during a rebellion that precipitated the Constitution that defined the office I enter into today. The armory was the country's major repository for firearms during the civil war and right through World War II, when 2.5 million M-1s were produced here by a work force of 40,000, half of them women.

The West has always been a hotbed of social unrest and turmoil. In the 1740s, Jonathan Edwards, who is still recognized as America's most brilliant theologian, preached a sermon while pastor in Northampton called "Sinners in the Hand of An Angry God" that terrified his parishioners so badly it triggered a religious movement called the Great Awakening that helped to shape the content of the First Amendment. John Brown in the 1850s kept a woolen warehouse down by the railroad tracks within walking distance of this hall that was used as a stopping off point for the Underground Railway. His later unsuccessful attack on the Harper's Ferry Armory has been humorously described as an attempt to wipe out the competition for Springfield's armory. Sojourner Truth lived in an utopian community in Florence, just west of Northampton, during the 1840s, as did for some time Frederick Douglass. W.E.B. DuBois, the founder of the NAACP, grew up in Great Barrington and his papers are housed at the University of Massachusetts.

It goes on and on. Dr. James Naismith invented basketball here in Springfield in 1891; four years later, volleyball was born in the Holyoke YMCA. The first automobiles were mass produced—if you consider eight mass production—here in Springfield. Theodor Geisel, also known as Dr. Seuss, comes from Springfield. We have the real Mulberry Street. In fact, in moving from magistrate judge to district court judge, I feel like the cat in the hat who came back. Three of the top ten liberal arts colleges in the country, including number one and two, are located in the Western Section. If we need any further proof of this region's unique appeal, Bill Cosby lives in Shelburne, and as we all know, Bill Cosby can live anywhere he wants.

The fabric of our community reflects in bright colors the extraordinary diversity of our country, from people who can trace their roots back to the Bloody Brook Massacre, through successive waves of immigration and change. I've already mentioned a number of outstanding African-Americans from Western Massachusetts. We have a proud, vibrant gay and lesbian community. In

recent decades we have been enriched by a growing Hispanic community. We have every religious group you can imagine and one or two you'd have trouble imagining.

I rest my case. If there is another piece of turf in the country that is as rich and diverse in culture and history as the four counties of Western Massachusetts, I don't want to hear about it. This is truly sacred ground. If the dream of mankind for community and happiness lives anywhere, it has lived and continues to live among the green hills of Western Massachusetts, and as practitioners of the law we have a responsibility to ourselves and to our children to cherish and protect this wonderful place.

Administering justice in such a turbulent and diverse community is both a privilege and a fascinating challenge. I will need all the help I can get. I hope to receive it not only from the lawyers who appear before me, but through regular collegial interaction with my brethren in the state court, whose supportive presence here today means so much to me and is so typical of our Western Massachusetts culture.

For all its flaws, the American judicial system is humanity's best effort so far at a fair system of justice. Maybe future generations will do better. I hope so. But for now, it is no exaggeration to say that there is not, nor has there ever been, a system of law that tries with such intense earnestness to protect the rights of the people who enter it.

All I can do today is to promise to do my best and to ask for your help in the effort. I know I will make mistakes. It is not the inevitability of mistakes that makes judging so hard. Most people understand you are not perfect. It is the inevitability of really dumb mistakes—the days you feel like the ugly duckling who just grew up to be a very ugly duck. Fortunately, lawyers make bad mistakes, too. I hope that, although I will sometimes make decisions you will find painful, and you from time to time will successfully appeal those decisions, we will retain our respect for each other, and keep strong our shared commitment as judges and lawyers to our common home, this exquisite part of the world.

And I'll make a deal with you. If you promise not to complain a year from now about what a great job I did as a magistrate judge compared to my work as a district court judge, and grumble about the Peter Principle, I will not complain about how much better I was treated by the bar before I moved from Article I to Article III.

We are all in this together. In September 1860, Emily Dickin-

son wrote to her friends Louise and Frances Norcross: "This world is just a little place, just the red in the sky, before the sun rises, so let us keep fast hold of hands, that when the birds begin, none of us be missing."¹

Thank you for being here.

1. Letter from Emily Dickinson to Louise and Frances Norcross (mid-September 1860) in 2 *THE LETTERS OF EMILY DICKINSON*, at 368 (Thomas H. Johnson ed., 1986).